

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SCOTT JOHNSON,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 3:15-cv-05337-KLS

ORDER AFFIRMING DEFENDANT'S
DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of defendant's denial of her applications for disability insurance and supplemental security income (SSI) benefits. The parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court affirms defendant's decision to deny benefits.

FACTUAL AND PROCEDURAL HISTORY

On September 12, 2012, plaintiff filed an application for disability insurance and another one for SSI benefits, alleging in both applications that he became disabled beginning July 27, 2011. Dkt. 10, Administrative Record (AR) 23. Both applications were denied on initial administrative review on November 16, 2012, and on reconsideration on February 4, 2013. *Id.* A hearing was held before an administrative law judge on August 27, 2013, at which plaintiff, represented by counsel, appeared and testified, as did a vocational expert. AR 45-82.

In a decision dated September 27, 2013, the ALJ determined plaintiff to be not disabled.

1 AR 23-38. Plaintiff's request for review of the ALJ's decision was denied by the Appeals
2 Council on March 27, 2015, making the ALJ's decision the final decision of the Commissioner.
3 AR 1; 20 C.F.R. § 404.981, § 416.1481. On May 27, 2015, plaintiff filed a complaint in this
4 Court seeking judicial review of that decision. Dkt. 3. The administrative record was filed with
5 the Court on August 3, 2015. Dkt. 10. As the parties have completed their briefing, this matter is
6 now ripe for the Court's review.

7
8 Plaintiff argues defendant's decision to deny benefits should be reversed and remanded
9 for an award of benefits because the ALJ erred: (1) in evaluating the medical opinion evidence;
10 (2) in discounting plaintiff's credibility; (3) in assessing her residual functional capacity; and (4)
11 in finding her to be capable of performing other jobs existing in significant numbers in the
12 national economy. For the reasons set forth below, however, the undersigned disagrees that the
13 ALJ erred as alleged, and therefore affirms defendant's decision.

14 DISCUSSION

15
16 The Commissioner's determination that a claimant is not disabled must be upheld if the
17 "proper legal standards" have been applied, and the "substantial evidence in the record as a
18 whole supports" that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986);
19 *see also Batson v. Commissioner of Social Security Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004);
20 *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991) ("A decision supported by substantial
21 evidence will, nevertheless, be set aside if the proper legal standards were not applied in
22 weighing the evidence and making the decision.") (citing *Browner v. Secretary of Health and*
23 *Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).

24
25 Substantial evidence is "such relevant evidence as a reasonable mind might accept as
26 adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation

omitted); *see also Batson*, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld if supported by inferences reasonably drawn from the record.”). “The substantial evidence test requires that the reviewing court determine” whether the Commissioner’s decision is “supported by more than a scintilla of evidence, although less than a preponderance of the evidence is required.” *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence admits of more than one rational interpretation,” the Commissioner’s decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence sufficient to support either outcome, we must affirm the decision actually made.”) (quoting *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).¹

I. The ALJ’s Evaluation of the Medical Opinion Evidence

The ALJ is responsible for determining credibility and resolving ambiguities and conflicts in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where the medical evidence in the record is not conclusive, “questions of credibility and resolution of conflicts” are solely the functions of the ALJ. *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such cases, “the ALJ’s conclusion must be upheld.” *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the medical evidence “are material (or are in fact inconsistencies at all) and whether certain factors are relevant to discount” the opinions of medical experts “falls within this responsibility.” *Id.* at

¹ As the Ninth Circuit has further explained:

... It is immaterial that the evidence in a case would permit a different conclusion than that which the [Commissioner] reached. If the [Commissioner]’s findings are supported by substantial evidence, the courts are required to accept them. It is the function of the [Commissioner], and not the court’s to resolve conflicts in the evidence. While the court may not try the case de novo, neither may it abdicate its traditional function of review. It must scrutinize the record as a whole to determine whether the [Commissioner]’s conclusions are rational. If they are ... they must be upheld.

Sorenson, 514 F.2dat 1119 n.10.

1 603.

2 In resolving questions of credibility and conflicts in the evidence, an ALJ's findings
3 "must be supported by specific, cogent reasons." *Reddick*, 157 F.3d at 725. The ALJ can do this
4 "by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
5 stating his interpretation thereof, and making findings." *Id.* The ALJ also may draw inferences
6 "logically flowing from the evidence." *Sample*, 694 F.2d at 642. Further, the Court itself may
7 draw "specific and legitimate inferences from the ALJ's opinion." *Magallanes v. Bowen*, 881
8 F.2d 747, 755, (9th Cir. 1989).

10 The ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted
11 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
12 1996). Even when a treating or examining physician's opinion is contradicted, that opinion "can
13 only be rejected for specific and legitimate reasons that are supported by substantial evidence in
14 the record." *Id.* at 830-31. However, the ALJ "need not discuss *all* evidence presented" to him or
15 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation
16 omitted) (emphasis in original). The ALJ must only explain why "significant probative evidence
17 has been rejected." *Id.*; *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*
18 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

20 In general, more weight is given to a treating physician's opinion than to the opinions of
21 those who do not treat the claimant. *See Lester*, 81 F.3d at 830. On the other hand, an ALJ need
22 not accept the opinion of a treating physician, "if that opinion is brief, conclusory, and
23 inadequately supported by clinical findings" or "by the record as a whole." *Batson v. Comm'r of*
24 *Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *see also Thomas v. Barnhart*, 278 F.3d
25 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). An
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1 examining physician's opinion is "entitled to greater weight than the opinion of a nonexamining
2 physician." *Lester*, 81 F.3d at 830-31. A non-examining physician's opinion may constitute
3 substantial evidence if "it is consistent with other independent evidence in the record." *Id.* at
4 830-31; *Tonapetyan*, 242 F.3d at 1149.

5 A. Dr. Adolphs

6 In late August 2013, plaintiff's treating physician, Shawna Adolphs, M.D., provided her
7 opinion as to plaintiff's ability to work (AR 545), in regard to which the ALJ found:
8

9 Dr. Adolphs opined the claimant has "very likely" been unable to work due to
10 diabetes, polyneuropathy, and chronic pain, since July 2011. Ex 14F/2. She
11 opined that the claimant has debilitating pain episodes, and that, even if he
12 worked at a full-time sedentary job, he would still miss more than two days of
13 work per month. Ex. 14F/2. Although Dr. Adolphs has been the claimant's
14 treating provider for approximately six months, her opinion is grossly out of
15 proportion to the objective evidence of record, including [examining
16 physician] Dr. [Lisa] Garrison's thorough examination findings with positive
signs of symptom exaggeration. In addition, Dr. Adolph's [sic] chart notes
reflect repeated normal physical examinations, which are inconsistent with her
opined limitations. Ex. 12F. It appears that Dr. Adolphs has relied quite
heavily on the claimant's self-reporting, and for reasons stated above, I find
that he has poor credibility. For those reasons, I give this opinion little weight.

17 AR 35. Plaintiff argues these reasons for rejecting Dr. Adolphs's opinion are insufficient. The
18 Court disagrees.

19 Although plaintiff asserts otherwise, Dr. Adolphs's own treatment notes are for the most
20 part devoid of objective clinical findings supportive of the level of limitation indicated in her
21 August 2013 opinion. *See* AR 499-502, 505-08, 510-13, 515-18, 521-25, 527-30, 532-35. And as
22 the ALJ points out, Dr. Adolphs's opinion is contradicted by the findings and opinion of Dr.
23 Garrison. *See* AR 467-71; *Batson*, 359 F.3d at 1195 (ALJ need not accept opinion of treating
24 physician, "if that opinion is brief, conclusory, and inadequately supported by clinical findings"
25 or "by the record as a whole"). Given that as discussed below the ALJ did not err in discounting
26

1 plaintiff's credibility, and the lack of objective support for Dr. Adolphs's opinion, the ALJ also
2 did not err in rejecting that opinion on the basis that Dr. Adolphs appeared to rely quite heavily
3 on plaintiff's self-reporting. *Morgan*, 169 F.3d at 602 ("A physician's opinion of disability
4 'premised to a large extent upon the claimant's own accounts of his symptoms and limitations'
5 may be disregarded where those complaints have been 'properly discounted.'") (quoting *Fair v.*
6 *Bowen*, 885 F.2d 597, 605 (9th Cir.1989)).

8 B. Dr. Losee

9 Plaintiff also challenges the ALJ's following findings concerning the opinion of Melinda
10 Losee, Ph.D.:

11 Dr. Losee opined the claimant can understand, remember, and carry out
12 instructions, even though he experiences periods of mildly-impaired
13 concentration. Ex. 5F/3. She opined he can adapt to changes in the work
14 setting. However, Dr. Losee further opined the claimant cannot handle the
15 normal pressures of a work setting or complete a normal workday due to
16 interruptions from his psychological symptoms. She indicated he will have
17 difficulty interacting appropriately with others. Ex. 5F/3-4. These opined
18 limitations are not consistent with Dr. Losee's mental status findings, which
19 showed the claimant was socially appropriate, made good eye contact, had
20 normal speech, could spell "world" correctly backward, could interpret
21 proverbs, had intact memory functioning, had average intellectual functioning,
22 and had adequate insight and judgment. Indeed, the only impairment Dr.
23 Losee noted in her examination was regarding concentration, but even she
24 described his concentration as "mildly impaired." Ex. 5F/3. Thus, it appears
25 that Dr. Losee must have relied quite heavily on the claimant's self-reporting,
26 but I have already found the claimant is not fully credible. For those reasons, I
give this opinion little weight.

AR 35-36. Here too plaintiff argues the ALJ's stated reasons for rejecting Dr. Losee's opinion
are not sufficient. Again, the Court disagrees. As with the opinion of Dr. Adolphs, the clinical
findings Dr. Losee obtained do not support the severity of functional limitation she assessed. *See*
AR 462-65; *Batson*, 359 F.3d at 1195. Accordingly, while it is true that "[a] patient's report of
complaints, or history, is an essential diagnostic tool" (*Green-Younger v. Barnhart*, 335 F.3d 99,

1 107 (2nd Cir. 2003) (quoting *Flanery v. Chater*, 112 F.3d 346, 350 (8th Cir.1997))), where there
2 is a lack of objective clinical support for a medical source's opined limitations and the claimant's
3 subjective complaints are properly discounted, an ALJ is not remiss in rejecting that source's
4 opinion on this basis (*Morgan*, 169 F.3d at 602). The Court thus finds the ALJ did not err here.

5 C. Dr. Parker

6 Finally in terms of the medical opinion evidence in the record, plaintiff finds fault with
7 the ALJ's evaluation of the opinion of James Parker, M.D.:
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9 Dr. Parker opined the claimant's primary issue is chronic pain. Ex. 2F/4. He
10 opined the claimant cannot perform simple, repetitive tasks at a slow pace.
11 However, this opinion contrasts greatly with his mental status testing results
12 demonstrating intact orientation, recent memory, and concentration. Ex. 2F/3-
13 4. Indeed, as Dr. Parker's opined limitations are not consistent with his
14 objective findings, he must have relied quite heavily on the claimant's self-
15 reporting. However, as explained earlier in this decision, I find the claimant is
16 not fully credible. In addition, the record shows that, even though the claimant
17 has current medical coverage, he is not pursuing mental health counseling,
18 which suggests that his symptoms are not as severe as he has reported. For all
19 of these reasons, Dr. Parker's opinion is given little weight.

20 AR 35. For the same reasons discussed above in regard to the opinions of Dr. Adolphs and Dr.
21 Losee, however, the Court finds the ALJ did not err in rejecting Dr. Parker's opinion, as again
22 the largely unremarkable findings contained in Dr. Parker's evaluation report along with the
23 ALJ's adverse credibility determination supports the ALJ's determination here. *See* AR 452-55;
24 *Batson*, 359 F.3d at 1195; *Morgan*, 169 F.3d at 602. While as plaintiff points out the mental
25 status examination Dr. Parker performed does contain some abnormal findings, those abnormal
26 findings hardly support the severity of limitations assessed by Dr. Parker, and the majority of
such findings were for the most part normal. AR 454-55. To the extent there was some conflict
in these findings, furthermore, it is solely the duty of the ALJ to resolve them, and therefore the
Court must uphold the ALJ's resolution thereof. *Morgan*, 169 F.3d at 601; *Reddick*, 157 F.3d at

1 722; *Sample*, 694 F.2d at 642.

2 II. The ALJ's Assessment of Plaintiff's Credibility

3 Questions of credibility are solely within the control of the ALJ. *Sample*, 694 F.2d at 642.
4 The Court should not "second-guess" this credibility determination. *Allen*, 749 F.2d at 580. In
5 addition, the Court may not reverse a credibility determination where that determination is based
6 on contradictory or ambiguous evidence. *Id.* at 579. That some of the reasons for discrediting a
7 claimant's testimony should properly be discounted does not render the ALJ's determination
8 invalid, as long as that determination is supported by substantial evidence. *Tonapetyan*, 242 F.3d
9 at 1148.
10

11 To reject a claimant's subjective complaints, the ALJ must provide "specific, cogent
12 reasons for the disbelief." *Lester*, 81 F.3d at 834 (citation omitted). The ALJ "must identify what
13 testimony is not credible and what evidence undermines the claimant's complaints." *Id.*; *see also*
14 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). Unless affirmative evidence shows the
15 claimant is malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear
16 and convincing." *Lester*, 81 F.2d at 834. The evidence as a whole must support a finding of
17 malingering. *O'Donnell v. Barnhart*, 318 F.3d 811, 818 (8th Cir. 2003).
18

19 In determining a claimant's credibility, the ALJ may consider "ordinary techniques of
20 credibility evaluation," such as reputation for lying, prior inconsistent statements concerning
21 symptoms, and other testimony that "appears less than candid." *Smolen v. Chater*, 80 F.3d 1273,
22 1284 (9th Cir. 1996). The ALJ also may consider a claimant's work record and observations of
23 physicians and other third parties regarding the nature, onset, duration, and frequency of
24 symptoms. *See id.*
25

26 The ALJ in this case discounted plaintiff's credibility for the following reasons:

1 First, the objective medical evidence and treatment record do not support the
2 claimant's allegations. The majority of mental status results throughout the
3 record have been unremarkable. The claimant has pursued no mental health
4 counseling, and has never been hospitalized on a psychiatric basis. In addition,
5 regarding his physical complaints, Drs. Garrison and Adolphs noted repeated
6 normal physical examinations with minimal findings. Indeed, the claimant's
7 functioning at his initial Seattle Pain Center visit . . . appears to have been
8 somewhat of an anomaly, because, at his next visit . . . he was ambulating
9 normally with no assistive device. The claimant's description of the severity
10 of his pain has been so extreme that it is out of proportion not only to
11 objective findings but also to logic.

12 Additionally, the claimant admitted that he had pain and depression during the
13 time he worked as a customer service representative at Comcast. *See* Exs. 2F;
14 5F/1-2. The vocational expert classified this job as skilled work, per the
15 Dictionary of Occupational Titles. While the claimant alleges he is no longer
16 able to work due to his impairments, the evidence suggests that he was not
17 only able to sustain full-time work with his alleged limitations, but also able to
18 perform skilled work far beyond the scope of his complaints. Likewise, as
19 there is no persuasive evidence that the claimant's condition has significantly
20 worsened since he stopped working, the record strongly suggests that his
21 impairments would not prevent current work. Furthermore, I note the claimant
22 reported to one provider that he stopped working because he had to move, and
23 not because of any allegedly disabling impairment.

24 Next, the claimant's reported activities cast doubt on his allegations. For
25 example, at [the] hearing the claimant testified he can do laundry, walk around
26 the property, cook dinner once per week, and participate in family dinners
multiple times per week. This is, however, inconsistent with his testimony that
he has difficulty being around others and with [his girlfriend's] reporting that
he is nearly dependent on his cane. The record further shows the claimant is
able to care for three dogs, perform housework, go grocery shopping, go to a
diabetes class, and ride a lawnmower. In addition, he was able to attend to
carbohydrate counting and exercise to such an extent that he lost forty pounds
towards the beginning of 2013. That the claimant was able to perform
activities that require physical, mental, and social demands undermines his
claim of totally disabling functional limitations.

27 Finally, the record contains inconsistent statements, including allegations that
28 appear to be exaggerated in comparison with medical evidence. For example,
29 Dr. Garrison noted that the claimant could fully bend over in order to tie shoes
30 but failed to do so during examination; that he responded to touch at control
31 points; and that he had positive Waddell signs. In addition, there is
32 inconsistent reporting throughout the record not only regarding marijuana use
33 but also regarding the reasons why the claimant stopped working at Comcast.
34 Lastly, the claimant reported to nearly every provider that he was trying to get

1 on disability, which suggests that he may have been consciously portraying
2 limitations not actually present in order to increase his chance of obtaining
3 benefits. Inconsistencies, such as these examples, seriously damage the
4 claimant's credibility.

5 AR 33-34. Further, the ALJ noted the record shows that even though plaintiff had "current
6 medical coverage," he did not pursue medical health counseling, suggesting that his symptoms
7 were "not as severe as he has reported." AR 35. All but two of these constitute valid reasons for
8 finding a claimant's subjective complaints to be less than fully credible. *See Burch v. Barnhart*,
9 400 F.3d 676, 681 (9th Cir. 2005) (upholding ALJ in discounting claimant's credibility in part
10 due to lack of consistent treatment, and noting that fact that claimant's pain was not sufficiently
11 severe to motivate her to seek treatment, even if she had sought some treatment, was powerful
12 evidence regarding extent to which she was in pain); *Bruton v. Massanari*, 268 F.3d 824, 828
13 (9th Cir. 2001) (ALJ properly discounted claimant's credibility in part due to fact that he left his
14 job for reasons other than his alleged impairment); *Tonapetyan*, 242 F.3d at 1148 (ALJ properly
15 discredited claimant's testimony in part based on "her tendency to exaggerate"); *Meanal v. Apfel*,
16 172 F.3d 1111, 1114 (9th Cir. 1999) (ALJ properly considered physician's failure to prescribe
17 and claimant's failure to request serious medical treatment for supposedly excruciating pain);
18 *Regennitter v. Comm'r of Soc. Sec. Admin.*, 166 F.3d 1294, 1297 (9th Cir. 1998) (determination
19 that claimant's complaints are "inconsistent with clinical observations" can satisfy the clear and
20 convincing requirement).

21
22 The Court does agree with plaintiff that the fact that he may have told his treatment
23 providers that he wanted to get on disability does not by itself necessarily reflect adversely on his
24 credibility, as the record fails to clearly show this was done as part of an attempt to deceive. The
25 Court also agrees that the record fails to show plaintiff engaged in activities of daily living either
26 at a frequency or to an extent that necessarily indicates they are transferable to a work setting or

1 that they otherwise contradict his other testimony. *See* AR 65-68, 70-71, 261-65, 287-91, 326-33,
2 337-42, 352, 355, 358, 368, 454; *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007); *Smolen*, 80
3 F.3d at 1284 n.7. Plaintiff further argues that in discounting his credibility due to inconsistency
4 with the medical evidence, the ALJ was “cherry picking” and ignored treatment notes indicating
5 the presence of impairments supportive of his subjective complaints. Dkt. 14, p. 11. But the mere
6 existence of a condition or impairment is, without more, insufficient to establish disability
7 (*Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993); *Higgs v. Bowen*, 880 F.2d 860, 863 (6th
8 Cir. 1988)), and as discussed above the ALJ did not err in evaluating the medical evidence in the
9 record overall.
10

11 As also discussed above, not all of the ALJ’s stated reasons for discounting plaintiff’s
12 credibility are valid. Nevertheless, even though some of those reasons were improper, the ALJ’s
13 credibility determination is still valid, given that it is supported by substantial evidence in the
14 record for the other proper reasons noted herein. *Tonapetyan*, 242 F.3d at 1148; *see also Bray v.*
15 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009) (although ALJ relied on
16 improper reason for discounting claimant’s credibility, he presented other valid, independent
17 bases for doing so, each with “ample support in the record”).
18

19 III. The ALJ’s Assessment of Plaintiff’s Residual Functional Capacity

20 The Commissioner employs a five-step “sequential evaluation process” to determine
21 whether a claimant is disabled. *See* 20 C.F.R. § 404.1520, § 416.920. If the claimant is found
22 disabled or not disabled at any particular step thereof, the disability determination is made at that
23 step, and the evaluation process ends. *Id.* If a disability determination “cannot be made on the
24 basis of medical factors alone at step three of that process,” the ALJ must identify the claimant’s
25 “functional limitations and restrictions” and assess his or her “remaining capacities for work-
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1 related activities.” Social Security Ruling 96-8p, 1996 WL 374184, at *2. A claimant’s RFC
2 assessment is used at step four of the sequential disability evaluation process to determine
3 whether he or she can do his or her past relevant work, and at step five to determine whether he
4 or she can do other work. *Id.*

5 Residual functional capacity thus is what the claimant “can still do despite his or her
6 limitations.” *Id.* It is the maximum amount of work the claimant is able to perform based on all
7 of the relevant evidence in the record. *Id.* However, an inability to work must result from the
8 claimant’s “physical or mental impairment(s).” *Id.* Thus, the ALJ must consider only those
9 limitations and restrictions “attributable to medically determinable impairments.” *Id.* In assessing
10 a claimant’s RFC, the ALJ also is required to discuss why the claimant’s “symptom-related
11 functional limitations and restrictions can or cannot reasonably be accepted as consistent with the
12 medical or other evidence.” *Id.* at *7.

13
14 The ALJ in this case found plaintiff had the residual functional capacity:

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16 **to perform light work . . . The claimant can lift/carry twenty pounds**
17 **occasionally and ten pounds frequently. The claimant can stand/walk for**
18 **about five to six hours out of an eight-hour workday. The claimant can sit**
19 **for about six hours out of an eight-hour workday. The claimant can have**
20 **limited contact with the public. He can perform no teamwork activities**
21 **and must work independently. The claimant can perform no fine reading**
22 **or fine detail work.**

23 AR 28 (emphasis in original). Plaintiff argues that given the ALJ’s errors in evaluating the
24 medical evidence in the record and in assessing his credibility, this RFC assessment does not
25 completely and accurately describe all of his functional limitations and therefore is not supported
26 by substantial evidence. But because as discussed above the ALJ did not so err, here too the
ALJ’s findings are free of error.

1 IV. The ALJ's Step Five Determination

2 If a claimant cannot perform his or her past relevant work, at step five of the sequential
3 disability evaluation process, the ALJ must show there are a significant number of jobs in the
4 national economy the claimant is able to do. *See Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th
5 Cir. 1999); 20 C.F.R. § 404.1520(d), (e), § 416.920(d), (e). The ALJ can do this through the
6 testimony of a vocational expert. *Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2000);
7 *Tackett*, 180 F.3d at 1100-1101.
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9 An ALJ's findings will be upheld if the weight of the medical evidence supports the
10 hypothetical posed by the ALJ. *See Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir. 1987);
11 *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's testimony
12 therefore must be reliable in light of the medical evidence to qualify as substantial evidence. *See*
13 *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ's description of the
14 claimant's disability "must be accurate, detailed, and supported by the medical record." *Id.*
15 (citations omitted). The ALJ, however, may omit from that description those limitations he or
16 she finds do not exist. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).
17

18 At the hearing, the ALJ posed a hypothetical question to the vocational expert containing
19 substantially the same limitations as the ALJ included in his assessment of plaintiff's RFC. AR
20 75-76. In response thereto, the vocational expert testified that an individual with those limitations
21 – and with the same age, education and work experience as plaintiff – would be able to perform
22 other jobs. *Id.* Based on the testimony of the vocational expert, the ALJ found plaintiff would be
23 capable of performing other jobs existing in significant numbers in the national economy. AR
24 37-38. Plaintiff argues the ALJ's errors in evaluating the medical evidence in the record and in
25 assessing his credibility make his step five determination unsupportable. Again, however, given
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1 that the ALJ did not so err, that determination also is not improper and must be upheld.

2 CONCLUSION

3 Based on the foregoing discussion, the Court finds the ALJ properly concluded plaintiff
4 was not disabled. Accordingly, defendant's decision to deny benefits is AFFIRMED.

5 DATED this 14th day of December, 2015.

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9 Karen L. Strombom
10 United States Magistrate Judge
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